

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JIANQIAO LU,
Plaintiff-Petitioner,

v.

MIRIAM E. ROCAH,
in her official capacity as
District Attorney for Westchester County;

CATALINA BLANCO BUITRAGO,
in her official capacity as
Assistant District Attorney
for Westchester County;

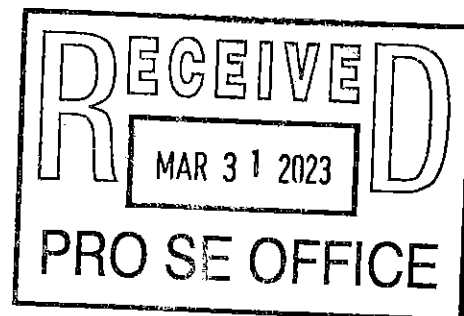
LETITIA A. JAMES,
in her official capacity as
Attorney General of the State of New York;

KATHY C. HOCHUL,
in her official capacity as
Governor of the State of New York;

JOSEPH K. SPANO,
in his official capacity as
Commissioner of the Westchester County
Department of Correction,

Defendants-Respondents.

7:22-CV-9715 (NSR)



APPLICATION FOR ORDER TO SHOW CAUSE
PURSUANT TO 28 U.S.C. SECTION 2243

IMMEDIATE RELIEF SOUGHT

1. Pursuant to 28 U.S.C. § 2243, pro se Plaintiff-Petitioner Jiangqiao Lu ("Plaintiff") respectfully requests that this Court issue an order to Defendants-Respondents ("Defendants") Miriam E. Rocah, Catalina Blanco Buitrago, Letitia A. James, Kathy C. Hochul, and Joseph K. Spano, requiring them to show cause as to why Plaintiff's Amended Complaint for Declaratory and Injunctive Relief and Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 (filed herewith) should not be granted, and why Defendants should not release Plaintiff from pretrial detention immediately.

2. As amended, the bulk of Plaintiff's claims for relief arise under 28 U.S.C. § 2241. He challenges the constitutionality of certain sections of the New York Penal Law, under which he is criminally indicted. Plaintiff has been detained without bail for over seventeen months at the Westchester County Jail, where excessively punitive and potentially dangerous conditions of confinement pose imminent irreparable harm.

3. Plaintiff initiated the instant action on November 14, 2022. On December 16, 2022, this Court completed screening and directed the U.S. Marshals Service to effect service of the complaint on Defendants. On December 22, 2022, Plaintiff mailed each Defendant a request for waiver of service pursuant to Fed. R. Civ. P. 4(d). He never received any response. On March 17, 2023, just as the ninety-day window allowed for service under Fed. R. Civ. P. 4(m) was about to close, the U.S. Marshals Service indicated on the docket that Defendant Letitia A. James had been served by mail. As of March 30, 2023, nearly five months after this case's inception, Defendants have yet to enter a notice of appearance.

4. In light of the fact that Plaintiff has a likelihood of success on the merits of his claims, that his perpetual detention is creating extraordinary irreparable harm, and that service in this case has been significantly delayed, Plaintiff respectfully requests that the Court adjudicate this case on an expedited basis, pursuant to 28 U.S.C. § 2243.

5. The federal habeas corpus statute provides that "[a] court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

6. Section 2243 further provides that the writ or order to show cause "shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed."

7. Section 2243 further provides that the court shall hold a hearing on the writ or order to show cause "not more than five days after the return unless for good cause additional time is allowed."

8. Section 2243 further provides that the court "shall summarily hear and determine the fact, and dispose of the matter as law and justice require."

9. Accordingly, Plaintiff respectfully requests that this Court: (i) direct Defendants to file a return to the Amended Complaint for Declaratory and Injunctive Relief and Petition for Writ of Habeas Corpus within three days after it is docketed, and (ii) schedule a Show Cause Hearing within ten days of Defendants' return.

10. Plaintiff hereby waives the reply brief and reserves argument until the Show Cause Hearing to expedite consideration by the Court.

11. Additionally, in light of Plaintiff's pro se prisoner status, he respectfully requests that the following accommodations be made by the Court and/or Defendants:

- (i) Any documents filed by Defendants on ECF shall be electronically transmitted to the Westchester County Jail with instructions to serve them upon Plaintiff on the day of such transmission;
- (ii) Any orders entered by this Court shall be electronically transmitted to the Westchester County Jail with instructions to deliver them to Plaintiff on the day of such transmission;
- (iii) Arrangements shall be made for Plaintiff to participate in teleconferences with the Court from a landline and in a noiseless environment;
- (iv) Arrangements shall be made for Plaintiff to appear in person before this Court for the Show Cause Hearing.

Dated: Valhalla, New York
March 30, 2023

Respectfully submitted,



Jianqiao Lu, pro se
Plaintiff

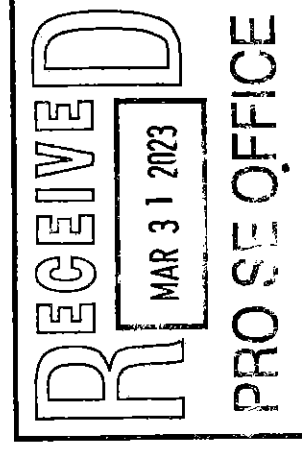
WCDOC #265008
PO Box 10
Valhalla, NY 10595-0010

LU v. ROCAH, 7:22-CV-9715 (NSR)

FILING # 3:

APPLICATION FOR ORDER TO SHOW CAUSE
PURSUANT TO 28 U.S.C. SECTION 2243

PLEASE SCAN AND FILE ON ECF



VIA COURIER

PRO SE INTAKE UNIT
CHARLES L BRIEANT JR COURTHOUSE
300 QUARROPAS ST
WHITE PLAINS NY 10601-4150